

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**FILED**  
JUL 12 2007  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

MARGIE McRAE,

Plaintiff,

V.

MICHAEL J. ASTRUE, COMMISSIONER  
SOCIAL SECURITY ADMINISTRATION,  
AND THE UNITED STATES, GEORGE  
BUSH, PRESIDENT,

Defendants.

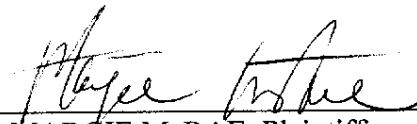
CIVIL ACTION

NO. C 07 1538 SBA

OPPOSITION TO MOTION TO DISMISS AND SANCTIONS

This opposition is based on Federal Rule 11 ( c ) (1) and is supported by the  
attached brief.

BY:

  
MARGIE McRAE, Plaintiff

Dated: July 11, 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MARGIE McRAE,	)	
	)	
	)	CIVIL ACTION
Plaintiff,	)	
	)	NO. C 07 1538 SBA
V.	)	
	)	
MICHAEL J. ASTRUE, COMMISSIONER	)	
SOCIAL SECURITY ADMINISTRATION,	)	
AND THE UNITED STATES, GEORGE	)	
BUSH, PRESIDENT,	)	
	)	
Defendants.	)	
_____	)	

BRIEF IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS AND  
SANCTIONS

Rule 11 ( c ) (1) requires that a challenged motion shall not be filed or lodged with the court till after 21 days to allow it to be withdrawn or corrected. This motion for dismissal was filed on July 2, 2007, the same time it was mailed to plaintiff. It is not in compliance with the above rule and should be denied.

It is correct that plaintiff did not serve the United States Attorney, but it was no less an inadvertence than a veteran United States Attorney placing the name of the Honorable Judge Martin J. Jenkins on a proposed order when the judge in this case is the Honorable Sandra Brown Armstrong (Exhibit 1). Busy people under the pressure of deadlines can, and do, make mistakes.

Plaintiff had a tight deadline based on the time constraints of Judge Jenkins' order. There was no intent to mislead and that would not be possible because plaintiff

would have to prove up her damages after default, and the omission would have surely come to everyone's attention at that time, if not before. It is undisputed that service was defective, but the summons and complaint have now been sent to the civil process clerk in the United States Attorney's office in San Francisco (Exhibit 2), so the defect should be corrected.

Plaintiff takes exception to the allegation of defective summons. That was not an issue in the previous case, though the United States Attorney was not named. The legal tome cited addresses defective service, but not summons. Since the summons is directed to the defendants, and the United States Attorney is not a defendant, it begs the question why the United States Attorney should be on the summons.

Plaintiff filed for default because she was ordered to show cause why she had not done so in the previous case. She apologizes to the Court and to the United States Attorney for her inadvertence, that added an extra layer to the process, but the remedy requested should be denied because it was not presented in compliance with Rule 11 ( c ) (1).

BY: \_\_\_\_\_

  
MARGIE McRAE, M.D., Plaintiff

Dated: July 11, 2007

# EXHIBIT 1

1 SCOTT N. SCHOOLS (S.C. BN 9990)  
 United States Attorney  
 2 JOANN M. SWANSON (SBN 88143)  
 Chief, Civil Division  
 3 JONATHAN U. LEE (SBN 148792)  
 Assistant United States Attorney

4 450 Golden Gate Avenue, Ninth Floor  
 5 San Francisco, California 94102  
 Telephone: (415) 436-6909  
 6 Facsimile: (415) 436-6748  
 Email: jonathan.lee@usdoj.gov  
 7

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN FRANCISCO DIVISION

11 MARGIE MCRAE,

12 Plaintiff,

13 v.

14 JOANNE BARNHART, Commissioner of  
 15 the SOCIAL SECURITY  
 ADMINISTRATION, Mark W. Everson,  
 16 Commissioner of the INTERNAL  
 REVENUE SERVICE; KAREN GILES;  
 17 PHYLLIS SCADUTO;

18 Defendants.

No. C 06-1999 MJJ

**ORDER GRANTING  
 ADMINISTRATIVE MOTION TO  
 CONSIDER WHETHER CASES  
 SHOULD BE RELATED**

Civil Local Rules 3-12(b), 7-11

19 MARGIE MCRAE,

20 Plaintiff,

21 v.

22 MICHAEL J. ASTRUE, COMMISSIONER  
 OF THE SOCIAL SECURITY  
 23 ADMINISTRATION; GEORGE W. BUSH,  
 PRESIDENT OF THE UNITED STATES  
 24 OF AMERICA,

25 Defendants.

No. C 07-1538 SBA

1 The Motion for Miscellaneous Relief under Civil Local Rule 7-11 is GRANTED. The Court  
2 finds that Action 07-1538 is substantially similar to Action 06-1999, an earlier action filed by Dr.  
3 McRae, and therefore the cases shall be related due to their common questions of fact and law.

4  
5 Dated: July \_\_, 2007

6 The Honorable Martin J. Jenkins  
7 UNITED STATES DISTRICT COURT JUDGE  
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# EXHIBIT 2

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PS Form 3800, June 2002 See Reverse for Instructions



**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the defendant in this matter with the following:

1. OPPOSITION TO MOTION FOR DISMISSAL AND FOR SANCTIONS
2. FIRST AMENDED COMPLAINT (not filed)
3. RESPONSE TO ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED

by properly addressing same to :

Jonathan U. Lee, Asst. U.S. Attorney  
Northern District of California  
Federal Building, 10<sup>th</sup> FL  
450 Golden Gate Avenue, Box 36055  
San Francisco, CA 94102-3495

and by depositing it with the United States Postal Service with adequate postage to assure delivery.

BY: \_\_\_\_\_

  
MARCIE McRAE, M.D., Plaintiff

Dated: July 11, 2007